

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Declaratory)	WC Docket No. 13-3
Ruling That Incumbent Local Exchange)	
Carriers Are Non-Dominant In The)	
Provision of Switched Access Services)	

COMPTEL’S REPLY COMMENTS

COMPTEL, through undersigned counsel, hereby responds to the comments filed in support of the United States Telecom Association’s (“USTelecom”) Petition for Declaratory Ruling That Incumbent Local Exchange Carriers (“ILECs”) Are Non-Dominant in the Provision of Switched Access Services. Not surprisingly, those supporting the Petition rehash the same arguments made by USTelecom, cite the same nationwide trends in ILEC retail market share and retail access line loss, fail to address the bottleneck control ILECs continue to exercise over access to their end users for the originating and terminating switched access services they sell to other carriers, and fail to make a compelling case that any ILEC, let alone all ILECs in the United States, is no longer is dominant in the provision of switched access services.¹ In light of the lack of new material presented in the comments, COMPTEL incorporates by reference the arguments already made in its Opposition to USTelecom’s Petition.

¹ See Comments of the Independent Telephone & Telecommunications Alliance (“ITTA”) in Support of USTelecom Petition for Declaratory Ruling; Comments of the Digital Policy Institute and Kleinhenz And Associates In WC Docket No. 13-3; Comments of Verizon and Verizon Wireless; Comments of AT&T, Inc.; Comments of the Free State Foundation; and Comments of the Internet Innovation Alliance.

Following in USTelecom's footsteps, the supporting commenters neglect to differentiate between the retail market for voice services where end users may have a choice of providers, and the carrier's carrier market for switched access services where the carrier purchasing the access service from the ILEC does not have a choice of providers. ITTA, for example, contends that "ILEC-provided switched-based services are just one of many competing alternatives consumers have for voice service" so "it no longer makes sense to treat ILECs as dominant in the provision of switched access voice services."² Similarly, AT&T alleges that in light of the alternatives available to consumers, including VoIP and wireless, there is no reasonable basis for classifying ILECs as dominant in the provision of retail voice services.³ While many consumers may have retail alternatives from which to choose for their voice service, USTelecom is asking for non-dominant treatment for switched access services, which are not retail services. Unlike end users, interexchange carriers ("IXCs") that need to originate or terminate a telephone call to a customer of an ILEC do not have competitive alternatives for accessing that customer. The only means of access is through the ILEC that serves the customer. And it is for this reason that the Digital Policy Institute's contention that the ILECs "lack the power to control prices, block access to customers and control critical facilities used by other competitors"⁴ is simply not true.

² ITTA Comments at 3; see also Comments of Verizon and Verizon Wireless at 1 ("cable providers, wireless providers, competitive LECs and other new IP-enabled services provide a range of options from which to obtain switched access or a substitute"); Comments of the Internet Innovation Alliance at 3 (given their loss of market share and the significant number of alternative voice service providers, ILECs are no longer dominant in the local exchange market).

³ AT&T Comments at 6-7.

⁴ Comments of the Digital Policy Institute and Kleinhenz And Associates In WC Docket No. 13-3 at 6.

USTelecom seeks relief from the tariffing, discontinuance of service and transfer of control regulations that apply to dominant carriers that provide switched access services.⁵

ITTA complains that legacy regulations that require ILECs to maintain POTS are not sustainable and impede the deployment of new technologies and services.⁶ It does not explain, however, nor could it, how the regulations from which USTelecom seeks relief⁷ require ILECs to maintain POTS.

Verizon alleges that ILECs do not control a bottleneck facility in the provision of switched access services.⁸ The Commission has correctly ruled otherwise, concluding that the IXCs that must pay switched access charges face a bottleneck monopoly from the ILECs that provide access to their end users.⁹ The existence of competitive alternatives in the retail market does not translate into competitive alternatives for the originating and terminating switched access services that IXCs must purchase from the ILECs to originate and complete their customers' calls.

⁵ USTelecom Petition at 9-10.

⁶ ITTA Comments at 6; see also Free State Foundation Comments at 8 (ILECs must pour financial resources into outdated networks in order to satisfy legacy regulatory requirements rather than consumer demand); Internet Innovation Alliance Comments at 11 (requiring sustained investment in redundant, TDM networks inappropriately redirects investment capital away from the networks that serve a growing majority of consumers).

⁷ USTelecom Petition at 9-10.

⁸ Comments of Verizon and Verizon Wireless at 1.

⁹ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113 at ¶ 79 (rel. June 22, 2010) (“*Phoenix Forbearance Decision*”), *aff’d sub nom. Qwest Corporation v. Federal Communications Commission*, 689 F. 3d 1214 (10th Cir. 2012).

Verizon also asserts that preparing cost support for tariff filings is burdensome and having to provide greater notice reduces its flexibility to offer new services.¹⁰ In so arguing, Verizon ignores the flexibility the Commission has built into the transitional pricing rules for switched access services by allowing carriers to enter into voluntary agreements with other carriers for rates different than the default rates.¹¹ At any rate, it is not at all clear what new switched access services, if any, the seven or fifteen day advance notice requirement impedes Verizon's ability to offer. Switched access services have two components – the originating and terminating access service ILECs provide to IXC's to complete their end users' long distance calls (charged on a per minute basis) and the access service ILECs provide to their end users to enable them to place and receive long distance calls (charged on a flat rate basis as the Subscriber Line Charge).¹² Verizon's failure to explain what new originating or terminating switched access services it would offer to IXC's or what new access to place and receive long distance calls it would offer to end users if it could file tariffs on one day's notice without cost support undermines the credibility of its argument.

AT&T maintains that dominant carrier status is a “scarlet letter,” citing the Commission's request for comment on whether it “should subject ILECs alone to regulation of IP-to-IP interconnection” in the Intercarrier Compensation/Universal Service proceeding.¹³ As AT&T is

¹⁰ Comments of Verizon and Verizon Wireless at 11; see also Free State Foundation Comments at 8 (stringent tariff filing requirements can slow ILECs' responsiveness and result in lost economic opportunities).

¹¹ 47 C.F.R. §51.905(a); see also *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶¶812, 1322 (rel. Nov. 18, 2011).

¹² *Phoenix Forbearance Decision* at ¶111.

¹³ AT&T Comments at 3.

well aware, the Commission has not singled out ILECs in its request for comments on the scope and nature of the requirements for good faith negotiations for IP-to-IP interconnection. On the contrary, the Commission has also asked for comment on whether such regulation should focus on all carriers generally or whether it should adopt differing standards for particular subsets of carriers, such as terminating carriers, ILECs, carriers that have market power or some other type of providers.¹⁴ Nonetheless, it is the ILECs that “generally have been reluctant to interconnect on an IP-to-IP basis”¹⁵ and both AT&T and Verizon have vigorously argued that the Commission lacks authority over IP-to-IP interconnection.¹⁶ The ILECs’ resistance to negotiate in good faith with other carriers for IP-to-IP interconnection clearly demonstrates that the Commission would be justified in subjecting ILECs alone to IP-to-IP interconnection regulation. Significantly, while insisting that any regulation of IP-to-IP interconnection would be unlawful, AT&T has proposed that carriers should have no right to demand TDM-based interconnection once it upgrades its wire centers to IP.¹⁷ The adamancy of AT&T’s opposition to the legality of any IP interconnection requirement to exchange voice traffic or the existence of any obligation to negotiate interconnection in good faith as well as its insistence that it makes the rules once it transitions its network to IP speak volumes. Only a dominant carrier could refuse to negotiate with other carriers in good faith the terms on which it will exchange voice traffic as the PSTN

¹⁴ *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶¶1335-1398 (rel. Nov. 18, 2011).

¹⁵ *Id.* at ¶783, n. 1444.

¹⁶ *See, e.g.*, Reply Comments of AT&T filed in GN Docket No. 12-353 on February 25, 2013; Reply Comments of Verizon and Verizon Wireless filed in GN Docket No. 12-353 on February 25, 2013.

¹⁷ AT&T Petition To Launch a Proceeding Concerning the TDM-to-IP Transition at 21, filed in WC Docket No. 12-353 on November 7, 2012.

transitions to IP and only a dominant carrier would presume to unilaterally dictate the rights, or lack thereof, of other carriers.

CONCLUSION

For the foregoing reasons and those stated in its Opposition to USTelecom's Petition for Declaratory Ruling, COMPTel respectfully requests that the Commission deny USTelecom's Petition and decline to find that all ILECs are non-dominant in the provision of switched access services.

Respectfully submitted,

/s/

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